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THE THREE LAST AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

The Thirteenth, the Fourteenth and the Fifteenth amendments to our Federal Constitution were imposed by the stronger section of the government upon the weaker section against the latter's will, and greatly to its injury, while these amendments have no application whatever to the stronger section. The thirteenth amendment was adopted by thirty-three states out of thirty-six. Ten of these states afterwards were declared not to be states in the union, cutting down the indorsement to twenty-three. But Congress had a way of counting a state's vote, according to the way the states voted. While there can be no question about the unconstitutionality of the thirteenth amendment, there is also no question but every state in the union would have voted to free the slaves in its own borders and also would have voted for the thirteenth amendment. And it is of such a nature that it cannot now be repealed, and if declared by the Supreme Court never to have been legally adopted, its nature is such that it could not be reversed. So it will have to stand against all possible legislation.

The other two amendments were passed during "the terrible days of reconstruction," when there was no liberty in the South. I knew one very prominent union man in those days, who by way of apologizing for the Republican party, said it was a good party but "the mean men just now are on top." And it was so. It is generally conceded by the Republican party now, that reconstruction was a mistake. As evidence of this, an overwhelming majority of the House of Representatives, during Grant's second administration were returned to Congress, opposed to a further indulgence in "waving the bloody shirt." But as soon as the Southern states were restored to self-government in the election of Mr. Tilden, most of these drifted back to their old love. There is no other time in the history of our

government in which these two amendments could have been adopted by a majority of the Northern states, and no other means by which they could possibly have been ratified by any one of the fifteen Southern states than were used at the time. They were not written with pen dipped in ink, but with bayonets dipped in blood. This was against the law of justice, against the law of humanity, against the law of nations, against the law of liberty, against the law of the Federal government that did it—against every law but the "divine right of kings."

We have now presented two reasons why these amendments are unconstitutional: First, because one group of states has no right to impose laws upon another group of states, burdensome to the latter and not applicable to the former. Second, because a bayonet law is no law; it is force.

The South suffered a double reconstruction. Immediately after the surrender the states of the secession purposed to meet and repeal the ordinance of secession, but President Johnson forbade such action. He appointed loyal provisional governors of each of the states, with instructions to reorganize, call state conventions to make such amendments suitable for their changed conditions, and hold elections for state officers and for representatives in Congress. This was all done; the provisional governors turned over the state governments to permanent and regular formed governments. Each state then elected senators, rescinded the ordinances of secession, and adopted the thirteenth amendment and afterwards rejected, by an almost unanimous vote, the fourteenth.

This was executive reconstruction. Congress recognized the vote for the thirteenth amendment and declared it passed by the proper majority of the states, but did not receive the representatives and senators in Congress.

Executive reconstruction did not please Congress. We will judge the reason by what Congress did. The fourteenth and fifteenth amendments were proposed by two-thirds of Congress, when representatives and senators of ten of those states were excluded. This alone is sufficient to render these two amendments unconstitutional in their passage, for one-third of the senators of the union and nearly one-third of the representatives were

denied all participation in the passage of the measure, and that too when the measure applied not to the states participating, but to those not participating.

Here is the law for amendments: "The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution * * * provided that no state, without its consent, shall be deprived of its equal suffrage in the senate." The senate alone is here mentioned, because it was feared that the larger states at some day might be disposed to claim larger representation than the smaller ones in the senate. In passing these two amendments ten states had no representation in either house. The provision was as strong by implication to members of the lower house as to the senate. This is the third reason for the unconstitutionality of these two amendments.

Amendments must also be endorsed by three-fourths of the states. Congress acknowledges that it must obtain the consent of three-fourths of *all* the states, of those lately engaged in the so-called rebellion as well as the others. When the Constitution says two-thirds of Congress, it means two-thirds of a Congress of all the states and plainly puts in a provision of that kind with regard to the senate.

Congress with equal propriety could have declared the amendments had been adopted when three-fourths of the states not including these ten Southern states had voted as it declared two-thirds of Congress had proposed the measure, without counting these ten outcast states.

On the adoption of the amendment (XIV) by the United States senate, Senator Garrett Davis, of Kentucky, said: "Sir, your amendments to the Constitution are all void, they are of no effect. They were proposed by a mutilated Congress; they were proposed by a mutilated house of representatives and senate."

In June, 1866, the fourteenth amendment of the Constitution was submitted for the ratification of the states. This amendment admits by its provisions that the state had the sole right to regulate the suffrage of its citizens, by making it constitutional that if any state should refuse to extend the elective franchise

to the negroes, its representation in Congress and in the electoral college should be cut down in proportion. It was submitted to the states for their ratification immediately after its adoption by Congress. It also repealed the old constitutional law that every five negroes should be counted as three white persons. It provided, if adopted, that the whole number of negroes should be counted, but if not, none of them should be counted. By March 30, 1867, it had been ratified by twenty states and rejected by thirteen, including ten of the seceded states. These ten rejected it almost unanimously by every legislature. The requisite three-fourths not being attained, it was not ratified. The executive and judicial departments of the government recognized the seceded states as now restored to all their rights, but Congress ruled otherwise. It did not declare that the fourteenth amendment had failed, but proceeded by force to bring the recusant Southern states to terms. Congress perceived that these states preferred to have their representation reduced than to have it increased and share their political rights with the negroes.

On March 2nd Congress declared: "All civil government in the states lately in rebellion, provisional only and shall in all respects be subject to the paramount authority of the United States, at any time to abolish, modify, control and supersede the same, and in all elections to any office under the provisional governments all persons shall be entitled to vote under the provisions of the fifth section of this act."

This admits all negro men to vote in the reorganization for election of persons to office. The fifth section for readmission of the rebel states into the union required a Constitution in conformity with that of the United States framed by the convention of delegates elected by loyal citizens and negroes, "and when such Constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors for delegates, and when such Constitution shall be ratified by a majority of the persons voting on the question of ratification who are qualified as electors for delegates, and when such Constitution shall have been submitted to Congress for examination and approved, and Congress shall have approved the same, and when said state, by a vote of its legisla-

ture elected under said Constitution shall have adopted the amendment to the Constitution of the United States, proposed by the Thirty-ninth Congress, and known as Article XIV, and when said article shall have become part of the Constitution of the United States, said state shall be declared entitled to representation in Congress," etc.

This is an act of Congress, not a part of the XIV Amendment. It is grossly unconstitutional because it forced the rebel states either to remain out of the union under carpetbag and negro rule sustained by military power, or to adopt the amendment. Not only this, but the elections to the conventions were ruled and forced by the military, so there was no alternative but to indorse the amendment, or rather none were allowed to vote but such as would vote as directed by military officers. Note here that the Federal government and not the states regulated the elective franchise, contrary to the Constitution, and practically admitted by the amendment.

The South was divided into five military districts, a major general commanding each one. These generals took entire control of the states, of registrations, etc., even setting aside the decision of courts, deposing governors, dispersing legislatures, and even municipal officers, and setting up others obedient to orders. Schofield was appointed to the District of Virginia and North Carolina. He so thoroughly performed his work in registering the voters, that the convention to which delegates were elected, passed laws of exclusion so extreme that General Schofield, in his address in opposition to them, said: "You cannot find in some of the counties a sufficient number of men who are capable of filling the offices, and who can take the oath you have prescribed here. I have no hesitancy in saying that I believe it impossible to inaugurate a government upon that basis." The convention, however, adopted the Constitution and Schofield was superseded by General Stoneman. It was voted on by the people later. The disfranchising clause and the test oath clause were voted down.

In North Carolina, Governor Worth refused to surrender his office to Mr. Holden, the newly elected governor, on the reconstruction of the state, saying to him: "You (Gov. Holden)

have no evidence of your election, save a certificate of a major general of the United States Army." But that major general put Holden in possession of the office.

All the other eleven states passed through the same manner of reconstruction, except Tennessee, which had been reconstructed during the war on a plan just as arbitrary and objectionable as the others. The XV Amendment was also ratified by these military legislatures.

The Constitution guarantees every state a republican form of government, a government by the people, but instead of this, the United States established over these eleven states a military government, composed of officers and soldiers not inhabitants of the states, and civil governments were established by them and not by the people of the states. This of itself is sufficient to invalidate the XIV and XV Amendments.

I can see how a conquering party in a government might claim the right to disfranchise individuals in their reconstruction of the conquered, provided there are not too many, but when practically all, or nearly all, or even a majority were engaged in the rebellion, so-called, there is no way to restore a republican form of government with these disfranchised, for such a government would not be by the people for whom it was instituted. Besides, Vatel, than whom there is no higher authority on international law, says, no large number of people can properly be called rebels, that such number uniting in any course of measures about their own interests, makes it honorable. Their united judgment is the highest known authority.

Andrew Johnson, in his veto message, said, of this military rule. "It is impossible to conceive of any state of society more intolerable than this, yet it is the condition of twelve millions of American citizens." Mr. Pierpont, the first governor of Virginia under military rule, boastingly said. "Thus state sovereignty is disposed of." If depriving the intelligence, the wealth and all competent persons, of participation in politics, and installing instead thereof ignorance and incompetency, is not sufficient to invalidate a political measure what is?

But even if it could be made lawful to disfranchise so large a number of citizens, it could not be made lawful to annul the

laws and constitution of a state when recognized as being in conformity in all respects with the Constitution of the United States. This is unquestionably beyond the powers of Congress. When the states passed ordinances of secession, it in no wise repealed their constitutions or state laws. These constitutions were in full force under the first reconstruction. But the Act of March 2nd ignored them and directly repealed them by ordering entire new constitutions. One clause especially repealed a law of every constitution of these states which, I think, is now in the constitution of every state in the union and has always been. It is this: in proposing any constitution or amendment to it for adoption by the people, a majority of the registered electoral vote is required. In an act of March 2, 1867, this clause appears, "and when such constitution (of a state) shall be ratified by a majority of the persons voting on the question of ratification who are qualified as electors for delegates," etc. In Alabama 85,000 was a majority of the registered vote, but only 75,000 votes were cast, and a majority of these were for the constitution. The law of the state required a majority of the registered vote. The XIV and the XV amendments were proposed and carried by ignoring or annulling the constitutions of ten of the seceded states. It is a very different thing to deprive citizens of the elective franchise on account of real or fancied wrongs, and to annul the constitution of a state long recognized as in conformity with the laws of the union. Congress did both of these, either one being sufficient to invalidate the two amendments.

Attorney General R. V. Fletcher, of Mississippi, in his great speech before the Association of Attorney Generals at Denver in 1908, called attention to the following clause of the fourteenth amendment: "Nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Mr. Fletcher said in commenting: "For the first time, within the history of our government, sanction was given in the Constitution that the Federal government should supervise the states in the interpretation and application of their reserved powers. No such idea dominated the thought of those who framed the Constitution."

In the passage of the XIV amendment, the force of this clause was not well considered. Its application to the protection of the negroes in the South was about all that was thought of at the time. If its full application to all the states had been considered, I believe every state in the union would have rejected it. Is it not right that the states should have a chance to repeal their mistakes?

The leading men now of all parties admit the reconstruction acts of Congress were a mistake. But these two last amendments are the result of reconstruction. If reconstruction was a mistake, why not correct as much of its mischief as can be done now? Other things done in those days are now past remedy, but the evils of these two amendments still continue and can be easily repealed. We ask our northern neighbors who are out of the ditch, to extend a hand and help us out.

There is no provision for territories or states out of the union to vote on any amendment to the Constitution, yet these ten unrepresented states were required to pass on these amendments in a territorial capacity. If they were states in the union, they should have had representation in Congress when the measures were proposed, and their state constitutions should have been recognized. If they were not in the union, the measures should not have been proposed until they were re-admitted as members of the union. The Act of March 2nd required that they should not be admitted until the two amendments had been ratified and declared by Congress to be parts of the national Constitution, and Congress should pass a bill declaring their restoration to the union. *No such provisions can be found in the Constitution.* These amendments then were null and void. The states were out of the union and under the martial law of enemies. Territories cannot vote on amendments to the Constitution.

There is quite a difference between an amendment to the Constitution and an addition to it. To amend requires two-thirds of Congress and three-fourths of the states; to add to it requires the indorsement of every state in the union. Suppose a bill should be passed by two-thirds of Congress and three-fourths of the states, that the trial by jury, or the habeas corpus should

be stricken from the Constitution. I think no judge in the union would consider it valid, and that it could be made valid only by the indorsement of every state in the union. Freeing the slaves would come under this head, but say judges, this was a war measure. Admitted; but it is a strange statement that the Southern states seceded to prevent the freeing of the slaves, and the Northern states freed the slaves to force the return of the seceded states.

To regulate the elective franchise of a state, and especially to enfranchise the freedmen, was clearly an addition that required every state to ratify it to make it valid. This is an opinion expressed by some of our most distinguished statesmen.

The following quotation from the Constitution has some bearing upon this point: "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property of the United States; and nothing in this Constitution shall be so construed as to prejudice the claims of the United States, or of any particular state."

This is unquestionably meant to prevent Congress from interfering with slavery in the territories, for such action on the part of Congress would have materially prejudiced the claims of the slave states; for every slave state claimed the right of its citizens to move into any of the territories with their slaves and dwell there. This is doubtless the most restrictive clause in the Constitution. It is a plain statement that any single state can veto a law made for the benefit of all the other states together, provided such law infringes upon her claims. Congress might pass a law which would be for the benefit of every state in the union but one, and if it should materially prejudice the claims of that state, by appealing to the Supreme Court and proving the same to the satisfaction of the court that the law was prejudicial to her claims to a material degree, the court would be bound to decide the law unconstitutional.

If this power belongs to a single state to veto what is done in a territory outside of her borders, how much more does it apply to a law passed to operate within her borders? This is a bulwark against Federal interference in the affairs of a state, as far as a law can stand against a sword. The XIV and XV

amendments are highly prejudicial to the interests and claims of the fourteen slave states, and so were the acts of Congress by which these amendments were passed, and of no benefit to the other states.

The following is copied from the Attorney General's address to the President, June 12, 1887:

"It appears that some of the military commanders have understood this grant of power as all comprehensive, conferring on them the power to remove the executive and judicial officers of the State, to appoint others in their places, to suspend the legislative power of the state; to take under their control, by officers appointed by themselves, the collection and disbursement of the revenues of the State; to prohibit the execution of the laws of the State by the agency of its own officers and agents; to change the existing laws in matters affecting purely civil and private rights; to suspend or enjoin the execution of judgments and decrees of the established State courts; to interfere in the ordinary administration of justice in State courts, by prescribing new qualifications for jurors; and to change upon the ground of expediency, the existing relations of parties to contracts, giving protection to one party by violating the rights of the other party."

The Attorney General then gave many instances in proof of these charges. And this is how the amendments were passed.

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